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National Confectioners Association

7900 Westpark Drive • Suite A-320 • McLean, Virginia 22102-4203 • Telephone: 703/790-5750 • FAX: 703/790-5752

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April 19, 1993

Dockets Unit
Research and Special Programs Administration
Department of Transportation
400 Seventh Street, N.W., Room 8421
Washington, D.C. 20590-0001

RE: Docket No. HM-214, Amendment Nos. 171-119, 172-128, 173-232, 174-71 and 176-32

Dear Sir or Madam:

The Chocolate Manufacturers Association (CMA) and the National Confectioners Association (NCA) appreciate the opportunity to submit this comment regarding the Research and Special Programs Administration's (RSPA) interim final rule on oil spill response plans applicable to bulk packagings containing oil, 58 Fed. Reg. 6864 (Feb. 2, 1993).

CMA is the national nonprofit trade association representing eleven of the thirteen manufacturers of chocolate in the United States. CMA members produce at least 90 percent of all chocolate manufactured in this country.

NCA is the national nonprofit trade association representing 86 manufacturers of non-chocolate and chocolate confectionery in the U.S.

NCA and CMA support the efforts of RSPA to comply with the mandates of the Oil Pollution Act of 1990 (OPA), and recognize its members' responsibility under the OPA to develop appropriate plans to anticipate and respond to actual or threatened discharges of oil. For the reasons set forth below, however, CMA and NCA oppose the categorization of animal fats and vegetable oils as "hazardous material" under the RSPA interim final rule.

Although RSPA previously has regulated certain petroleum-based oils as hazardous material, the agency has not previously classified animal fats and vegetable oils as hazardous material, and it has offered no safety rationale for doing so in the context of the present rulemaking. Instead, RSPA's decision to include animal fats and vegetable oils within the scope of the interim final rule seems to be merely a decision of convenience.

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As explained below, the costs of the RSPA rule to the industry and the public greatly outweigh any convenience that might arise from ~~regulating~~ all oils under a single rule. Further, the distinctive physical properties of animal fats and vegetable oils, the unnecessary, substantial costs that a hazardous material classification for animal fats and vegetable oils will impose on industry and the public, and the contradictory message that the classification of a traditional food ingredient as "hazardous" will send, confirms NCA's and CMA's views that animal fats and vegetable oils should not be categorized as "hazardous material" under the RSPA interim final rule.

I. THE CLASSIFICATION OF ANIMAL FATS AND VEGETABLE OILS AS A HAZARDOUS MATERIAL UNDER RSPA'S INTERIM FINAL RULE IS INAPPROPRIATE BECAUSE ANIMAL FATS AND VEGETABLE OILS GENERALLY LACK THE CHARACTERISTICS THAT MAKE OTHER SUBSTANCES "HAZARDOUS"

A hazardous material is defined as a substance or material that has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce. 49 U.S.C. § 1803; 49 C.F.R. § 171.8. In the preamble to the interim final rule, RSPA acknowledges that "most oils (e.g. gasoline, fuel oil, and most crude oil)" are regulated as hazardous materials under the Hazardous Materials Regulations (HMR), 49 C.F.R. Part 171, et seq., 58 Fed. Reg. at 6866. RSPA then proceeds, without explanation, to classify edible oils as hazardous material.

RSPA has not ~~previously~~ regulated animal fats and vegetable oils as hazardous material, however, and the agency fails to explain why, in the present context, animal fats and vegetable oils should be subject to the same regulatory requirements as other more dangerous and potentially toxic oils, such as petroleum-based oil.

On the contrary, the characteristics of animal fats and vegetable oils point away from classification as a hazardous material. From a health standpoint, it is widely accepted that animal fats and vegetable oils are non-toxic; indeed, the U.S. Food and Drug Administration regards animal fats and vegetable oils as "generally recognized as safe" (GRAS) for use as food ingredients and they are also approved for food use by the U.S. Department of Agriculture.

From an environmental standpoint, also, animal fats and vegetable oils do not present an unreasonable risk so as to warrant hazardous material classification. Animal fats and vegetable oils are readily biodegradable if spilled into the environment. Thus while large uncontained spills of animal fats and vegetable oils have the capacity to marginally impact sensitive ecosystems for a short period of time, these oils are no worse when spilled than are other common foods transported in the same manner. Moreover, in addition to being biodegradable, many animal fats and vegetable oils can be easily separated and cleaned from bodies of water into which they might be spilled. The propensity of many animal fats and vegetable oils, such as many hydrogenated or partially hydrogenated oils, to solidify at ambient temperatures facilitates the clean up of any such oil spill.

II. THE CLASSIFICATION OF ANIMAL FATS AND VEGETABLE OILS AS HAZARDOUS MATERIAL WILL UNNECESSARILY IMPOSE SIGNIFICANT ECONOMIC COSTS ON INDUSTRY THAT WILL ULTIMATELY BE PASSED ON TO THE CONSUMING PUBLIC

By classifying animal fats and vegetable oils as hazardous material for purposes of imposing OPA response plan requirements, RSPA will force all shippers and carriers of animal fats and vegetable oils to comply with the detailed and complex requirements of the HMR. These requirements include:

*Obligations for the packaging, marking, labeling, and placarding of hazardous materials. Equipment modifications may be necessary, for example, to handle placarding.

*Meticulous paperwork and recordkeeping requirements. Members of industry who make and use animal fats and vegetable oils will be required to maintain an elaborate "paper trail" documenting how individual shipments of animal fats and vegetable oils are transported and used.

*Special requirements for employee training.

•Special wash procedures for carriers. Specialized **equipment** and cleaning chemicals may be **required** for cleaning carriers of "hazardous" **material**. In addition, if carriers must be marked as "hazardous material" transport vehicles, shippers may lose the existing flexibility to use fleet vehicles for transporting food products other than oils.

Registration and fee requirements:

Insurance costs also will undoubtedly rise for parties who produce, transport, and use animal fats and vegetable oils because of the "hazardous material" classification.

Based on the increased costs associated with these new requirements, it is estimated that the purchase price of animal fats and vegetable oils could be driven up as much as 5% under RSPA's interim final **rule**.^{1/}

Other less direct, although still quite real costs, likely will also affect the industry. Markets for animal fats and vegetable oils and oil-containing food products may be adversely affected by unjustified consumer concerns about "hazardous" animal fat and vegetable oil ingredients. **Industry** development and construction opportunities could also be limited due to concerns about the introduction of "hazardous material" into particular neighborhoods.

Many shippers and NCA and CMA members already have procedures in place for spill containment and cleanup. Thus, the RSPA interim final rule imposes the significant economic costs described above without necessarily providing a benefit to the public.

Ultimately, the increased costs **stemming** from RSPA's interim final rule will be passed on to consumers through increased prices for animal fats and vegetable oils and oil-containing foods, and perhaps through decreased choice in the marketplace as producers of low-profit products are forced to curtail production.

111. RSPA'S CLASSIFICATION OF ANIMAL FATS AND VEGETABLE OILS AS HAZARDOUS MATERIAL **IS** INCONSISTENT WITH USDA'S EFFORTS TO PROMOTE THE USE OF ANIMAL FATS AND VEGETABLE OILS AS SUBSTITUTES FOR MORE ENVIRONMENTALLY DAMAGING PETROLEUM-BASED OILS

RSPA's interim final rule classifying animal and vegetable oils as hazardous material is inconsistent with the efforts of the U.S. Department of Agriculture (USDA) to promote new uses of animal fat and vegetable oil products as substitutes for petroleum oil products. Current USDA efforts include encouraging the use of diesel fuels made from soybean rather than petroleum oil, researching the use of vegetable oils as carriers for pesticides and herbicides, and researching the use of cottonseed and soybean oils for dust suppression in grain processing plants. USDA has also participated in the development of a soy-based printing ink.

^{1/} We note that Senator Richard Lugar of Indiana has written to Secretary Pena on this issue, indicating, for example, that the rail rate for a typical hazardous material shipment is \$120 per carload higher than a comparable shipment of edible oils under current regulations.

USDA's efforts are intended to reduce U.S. reliance on petroleum-based products, which are more environmentally harmful than their animal- and vegetable-based counterparts. RSPA's designation of animal fats and vegetable oils as "hazardous" is inconsistent with these efforts and is likely to reduce consumption of these commodities rather than to further their use.

IV. THE INTERIM FINAL RULE CONFLICTS WITH THE GOALS OF THE SANITARY FOOD TRANSPORTATION ACT OF 1990

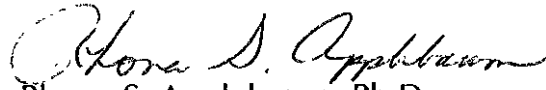
The Sanitary Food Transportation Act of 1990, 49 U.S.C. App. § 2801, et seq., was enacted by Congress to prevent the transportation of food in certain vessels or containers that have previously been used to transport refuse or other non-food products that would render food unsafe to human or animal health. By classifying animal fats and vegetable oils as "hazardous material", RSPA contradicts Congress' intent to clearly separate the transportation of food products from the transportation of potentially harmful non-food products.

V. CONCLUSION

RSPA's designation of animal fats and vegetable oils as "hazardous material" is inappropriate for purposes of implementing the OPA and will impose significant costs on industry and the public without commensurate gains. Because many shippers and NCA and CMA members already have in place procedures for spill containment and cleanup, including animal fats and vegetable oils under the RSPA interim final rule would needlessly invoke the costly requirements of the HMR, without providing the intended health and environmental benefits to the public.

In closing, CMA and NCA appreciate the opportunity to present their views and would, at your convenience, be pleased to meet and discuss them with you.

Respectfully Submitted,


Rhona S. Applebaum, Ph.D.
Executive Vice President

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